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IN THE MATTER OF THE INVESTIGATION)
ON THE COMMISSION'S OWN MOTION, UNDER)
INDIANA CODE § 8-1-2-72, INTO ANY AND ALL)
MATTERS RELATING TO THE COMMISSION'S)
MIRRORING POLICY ARTICULATED IN)
CAUSE NO. 40785 AND THE EFFECT OF THE)
FCC'S MAG ORDER ON SUCH POLICY,)
ACCESS CHARGE REFORM, UNIVERSAL)
SERVICE REFORM, AND HIGH COST OR)
UNIVERSAL SERVICE FUNDING)
MECHANISMS RELATIVE TO TELEPHONE)
AND TELECOMMUNICATIONS SERVICES)
WITHIN THE STATE OF INDIANA)

FILED

DEC 02 2002

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42144

**RESPONDENTS: ALL TELECOMMUNICATION
SERVICE PROVIDERS, INCLUDING INTRASTATE
WIRELESS CARRIERS, IN THE STATE
OF INDIANA.**

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") made the following entry in this Cause.

On August 9, 2002, Nextel West, Inc., ("Nextel"), VoiceStream Wireless Corporation ("VoiceStream") and AT&T Wireless PCS, LLC ("AWS") (jointly referred to as the "Wireless Carriers") filed a *Motion of Nextel, VoiceStream, and AWS to Consider SUSF Issues in Phases and Separately* ("Motion to Bifurcate") and a *Motion to Dismiss* ("Motion to Dismiss") in this Cause (jointly referred to as "Wireless Motions").

On August 16, 2002, the Presiding Administrative Law Judge issued a Docket Entry that established timeframes for the submission of Responses, and Reply briefs by the Parties. Responses to the pending Motions were filed by the Indiana Office of the Utility Consumer Counselor ("OUCC"); the Indiana Bell Telephone Company a/b/a Ameritech Indiana ("Ameritech Indiana"); Clay County Rural Telephone Cooperative, Inc.; AT&T Communications of Indiana, GP and TCG Indianapolis (together "AT&T"); Cellco Partnership, a Delaware General Partnership d/b/a Verizon Wireless ("Verizon Wireless"); the Indiana Exchange Carrier Association, Inc., ("INECA"); Smithville Telephone Company, Inc. On September 10, 2002, the Wireless Carriers filed a Reply to the Responses filed in this Cause.

1. **Background.** On December 27, 2001, the Indiana Utility Regulatory Commission ("Commission") issued an Order in which it initiated this Cause on its own motion. Pursuant to notice, a Prehearing Conference was held in this Cause on February 5, 2002, and on February 14, 2002 the Commission issued its Prehearing Conference Order ("Prehearing Conference Order") in which the Commission divided this Cause into two phases. The initial phase ("Phase I"), was initiated to allow the parties to focus on resolving only those issues that needed to be resolved with respect to the Commission's practice of mirroring policies adopted in various orders in Cause No. 40785 and the interstate access rate and rate structure changes scheduled to take effect on July 1, 2002, arising from the Federal Communications Commission ("FCC") Second Report and Order and Further Notice of Proposed Rulemaking *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-166, FCC 01-304 (November 8, 2001) ("MAG Order"). The Prehearing Conference Order outlined the procedural framework for Phase I of this Cause and provided for an order to be issued by July 1, 2002 resolving Phase I issues.

On April 8, 2002, the Commission convened a Settlement Hearing at which time INECA, AT&T, Sprint, Smithville, Northwestern Indiana Telephone Company, Inc. ("Northwestern"), and Clay County (collectively, the "Settling Parties"), advised the Commission that they had reached a compromise and settlement of the Phase I issues, but had not yet reduced their agreement to writing. The essential terms and conditions of the Settling Parties' agreement were read into the record and the Settling Parties advised the Commission that they would prefile testimony in support of the agreement, along with the signed Settlement Agreement ("Settlement Agreement") by April 11, 2002, and indicated to the Presiding Officers that the Settling Parties planned to offer the Settlement Agreement, and testimony in support thereof, into the record of this proceeding at the Evidentiary Hearing.

An Evidentiary Hearing on the Phase I issues was conducted on May 16, 2002, at 9:30 a.m. in Room TC-10 of the Indiana Government Center South, Indianapolis, Indiana. At the Evidentiary Hearing, the direct testimony of INECA, AT&T, Clay County, Sprint, Verizon, Smithville, and the OUCC was offered and received into the record of this Cause. The supplemental direct testimony of Cate Hegstrom for AT&T and of Don Johnson for INECA in support of the Settlement Agreement was also offered and received into the record. Prior to the hearing, the OUCC had filed its concurrence with the Settlement Agreement, and Verizon had filed a letter indicating that it did not object to the Settlement Agreement. The Settling Parties' responses to the Commission's April 29, 2002, Docket Entry were also made a part of the record. Members of the general public appeared at the evidentiary hearing.

Following the Evidentiary Hearing, the Commission issued an Interim Order on May 29, 2002, ("Interim Order") in which it accepted the Parties Settlement Agreement in resolution of Phase I issues pending resolution of Phase II of this proceeding. The Interim Order also incorporated certain findings made by Presiding Officers in a Docket Entry issued in this matter on May 15, 2002, that outlined the Commission's framework for Phase II of this proceeding.

Pursuant to the terms of the Interim Order, the Commission determined that Phase II of this proceeding would commence with a series of technical workshops to allow the parties to discuss and narrow the numerous and complex issues in this Cause. The Commission indicated in an effort to ensure an effective and orderly discussion of the issues, the parties should form an Executive Committee comprised of key members representing the various interests in this Cause; that the technical workshops should be noticed as preliminary hearings; and, that members of the Commission's telecommunications staff would facilitate the technical workshops. The Commission also indicated that the Executive Committee would prepare and file a Preliminary and Final Report with the Commission as part of Phase II of this proceeding.

The Commission also determined in its Interim Order that each party to this Cause should submit a list of the issues it believes remain to be investigated in Phase II of this proceeding, and scheduled the initial technical workshop for June 12, 2002. The Commission advised the Parties in its Interim Order and that following the initial technical workshop, the Executive Committee shall file a Preliminary Report that includes the initial issues identified by the Presiding Officers in their May 15, 2002 Docket Entry, along with any additional issues that the Parties have determined should be addressed in Phase II of this proceeding. The Commission further indicated that the Preliminary Report should also include a list of the Wireless companies in the State that should be notified regarding Phase II of this proceeding.

In its Interim Order the Commission also scheduled an Evidentiary Hearing in this matter for the purposes of presenting any settlement and evidence in support of settlement of issues resulting from the technical workshops, and to present evidence on any and all issues that have not been resolved.

In its December 27, 2001, Order ("Order") instituting this Cause the Commission stated that:

The Commission finds that [the possible creation of a State Universal Service Fund] will be an important issue in this broad investigation initiated by the Commission. Prior to a creation of a state universal service fund, we ask parties to consider what type of legislative authority the Commission needs to create such a fund in addition to any legal issues regarding any overlap with the Federal Universal Service Fund. Prior to the creation of a state universal service fund, the Commission should resolve such issues as which entities contribute to the fund and if any demonstration of need is required to obtain funds, and the Commission desires the assistance of interested parties in making such determinations. The Commission also asks the parties to recommend a mechanism to transition the existing Indiana High Cost Fund and the Transitional Universal Service Fund into one single state universal service fund. The issues listed are not intended to be exhaustive or immutable,

and the Commission will ask the parties to develop a list of specific issues after an initial Prehearing Conference.

The Commission also indicated in its Order opening this investigation that “[A] formal and expedited investigation is hereby commenced in accordance with Indiana Code § 8-1-2-72, regarding the mirroring policy adopted by the Commission in Cause No. 40785 and that this expedited investigation will also address other issues raised in Cause No. 40785, including but not limited to: access charge reform; universal service reform; the Indiana High Cost Fund; and the Transitional Dial Equipment Minutes (“DEM”) Weighting Fund.” Order at 3. The Commission also indicated that it welcomes the involvement of all interested parties in this investigation and that the Commission would specifically notify all the other parties from Cause No. 40785 of this investigation. Id. In its Order instituting this Cause, the Commission recognized that most states have a state universal service fund, and determined that the possible creation of a state universal service fund in Indiana will be an important issue in this broad investigation initiated by the Commission.¹

During the Technical Workshops some of the parties expressed concern regarding the apparent lack of participation by numerous wireless carriers in Phase II of this proceeding, and indicated that they believed that the level of participation might be due to a lack of adequate notice to the wireless carriers. The Presiding Officers addressed the concerns raised by the parties in a Docket Entry issued on July 18, 2002. In the Docket Entry the Presiding Officers indicated that while the Commission’s investigation, as well as the subject matter of this proceeding, has been fully and properly noticed in accordance with all statutory requirements, in an effort to address the concerns raised by the parties, the Presiding Officers hereby amended the caption in this matter to specifically name “All telecommunication service providers, including intrastate wireless carriers, in the State of Indiana as Respondents in this Cause.”

In the July 18, 2002, Docket Entry the Presiding Officers also indicated that: “[W]hile the Commission, in its December 27, 2001, Order in this Cause, welcomed the involvement of all interested parties, the Presiding Officers note that this is a formally docketed proceeding that has been legally noticed. Accordingly, determinations could be made by the Commission that directly impact each of the Respondents to this Cause.” The Presiding Officers further indicated that as the caption has been amended in this matter, this Cause would be re-noticed, for the date previously scheduled for a Technical Workshop on August 7, 2002, at 9:30 a.m. EST in Room TC-10 of the Indiana Government Center South, Indianapolis, Indiana.² Following the amendment of the

¹ In its May 29, 2002 Order the Commission also requested that the parties brief the issue regarding the Commission’s specific legal authority to develop a State Universal Service Fund. The parties have fully briefed this issue. The Wireless Carriers had previously intervened in this proceeding and, along with the other Parties to this matter, submitted a brief that discussed the Commission’s specific legal authority in this Cause.

² While this matter was re-noticed as an Evidentiary Hearing, the Technical Conferences continued to be utilized by the Parties as Preliminary Hearings in an effort to narrow and resolve the issues prior to the Evidentiary Hearing scheduled in this matter.

caption and the re-noticing of this Cause, several additional wireless carriers filed Motions to Intervene in this matter.

2. Overview of Issues Addressed in Motions Filed by the Wireless Carriers, and Responses to the Motions.

A. *Motion to Dismiss or Stay.* In their Motion to Dismiss, the Wireless Carriers contend that issues regarding the creation of State Universal Service Fund ("SUSF") should be dismissed by the Commission for lack of jurisdiction or, in the alternative, that the Commission should stay or suspend consideration of a SUSF until there is a final unappealable order which addresses the Commission's jurisdiction to create and require payments to a SUSF. As a basis for its motion, the Wireless Carriers indicate that: The Commission has no explicit or implied authority to establish a SUSF; and, that conducting a proceeding concerning SUSF, prior to the issuance of a Final Order that establishes that the Commission has jurisdiction, is contrary to the principles of economy and efficiency of public and private resources.

B. *Motion to Bifurcate.* In their Motion to Bifurcate, the Wireless Carriers request that the Commission: Bifurcate the SUSF issues into an initial *policy phase* to determine if an SUSF is necessary; and, if the Commission determines that an SUSF is necessary, then undertake a subsequent *implementation phase*. The Wireless Carriers also urge the Commission to separate SUSF issues from non-SUSF issues, and include with the non-SUSF issues the implementation of an alternate revenue recovery method related to the access rate reductions set forth in Phase I of this proceeding.

In their Motion to Bifurcate the Wireless Carriers contend that it is difficult, if not impossible, to address implementation issues such as who is assessed, who receives payments, the size of a SUSF, as well as administration and auditing until the Commission addresses the goals of a SUSF. Furthermore, it should not be assumed that the Commission will decide that there should be a SUSF - - or that the fund will mirror other existing funds. The Wireless Carriers note that at least one state Commission, upon investigating the need for a state universal service fund, found a state fund unnecessary. New Hampshire Public Utilities Commission, Order No. 23602, Docket No. DT-00-015 (December 22, 2000). If the Commission decides that there is a need for a SUSF and defines that need, then a separate phase, an "implementation phase", should proceed. Such a phase could decide from whom the Commission would raise revenue or compel payment from, whether specific types of carriers, customers or services would receive the funds, the size of the fund, administration, auditing and other administrative details.

C. *Additional Issues raised by the Wireless Carriers.* In their Motions, the Wireless Carriers further contend that in accordance with IC § 4-22-2 the Commission should implement a rulemaking to address SUSF issues. The Wireless Carriers also contend that the Commission is preempted by the Federal law generally from regulating the rates and charges of CMRS providers, and may do so only pursuant to petition granted by the FCC. 47 U.S.C. §332(c)(3).

3. **Analysis and Conclusions of the Presiding Officers.** The Presiding Officers having reviewed the Motions filed by the Wireless Carriers and the Responses thereto, hereby enter the following findings in this Cause:

A. ***Findings on Motion to Dismiss or Stay Proceedings.*** In their Motion to Dismiss the Wireless Carriers contend that the Commission lacks jurisdiction in this Cause and that this matter should therefore be dismissed. As pointed out in the Wireless Carriers' Motion, it is a fundamental principle of law that the Commission, as an administrative body of the state, derives its authority solely from the legislature and thereby possesses only those powers conferred on it by statute. *Kentucky-Indiana Mun. Power Ass'n v. Public Serv. Co.*, 181 Ind. App. 639, 393 N.E.2d 776,780 (1979). Thus, unless a grant of power can be found in the statute, we must conclude that there is none. *Citizens Action Coalition v. NIPSCO*, 485 N.E.2d 610, 612 (Ind. 1985), cert. denied, 476 U.S. 1137, 106 S. Ct. 2239, 90 L. Ed. 2d 687. Accordingly, any doubt about the existence of authority must be resolved against a finding of authority. *South Eastern Indiana Natural Gas Co. v. Ingram*, 617 N.E.2d 943, 947 (Ind. Ct. App. 1993).

However, in addition to the generally accepted principle that an administrative agency may not exercise power which is not granted to it by statute, "it is equally well settled that an administrative agency has such implicit power and authority as is inherent in its broad grant of power from the legislature to regulate [that] which is necessary to effectuate the regulatory scheme outlined by the statute." *NIPSCO v. Citizens Action Coalition*, 548 N.E.2d 153, 158 (Ind. 1989); *see also, Indiana Util. Regulatory Comm'n v. Gary Joint Venture*, 609 N.E.2d 7, 10, (Ind. Ct. App. 1993) reh'g denied, trans. denied, (holding that state agencies "possess powers beyond those expressly set forth in the authorizing statutes.") disapproved of on other grounds by *Austin Lakes Joint Venture v. Avon Utils., Inc.*, 648 N.E.2d 641 (Ind. 1995).

The present case was undertaken by the Commission as an investigation "into any and all matters relating to the Commission's mirroring policy articulated in Cause No. 40785 and the effect of the FCC's MAG Order on such policy, access charge reform, universal service reform, and high cost or universal service funding mechanisms relative to telephone and telecommunications services within the State of Indiana." And the Commission has named "all telecommunication service providers, including intrastate wireless carriers, in the State of Indiana as Respondents in this Cause."

Under IC § 8-1-2.6-3, the Commission has the authority to institute an investigation, as it has done within this proceeding, on its own motion, to adopt rules or by an order in a specific proceeding, provide for the development, investigation, testing and utilization of regulatory procedures or generic standards with respect to telephone companies or services. IC § 8-1-2.6-3 states in pertinent part:

Notwithstanding any other statute, the Commission may (1) on its own motion . . . adopt rules or by an order in a specific proceeding, provide for the development, investigation, testing and utilization of regulatory procedures or generic standards with respect to telephone companies or services. The Commission shall adopt the rules or enter an order only if

it finds, after notice and hearing, that the regulatory procedures or standards are in the public interest and promote one (1) or more of the following . . . “ (Emphasis added).

Under this jurisdictional mantel, the Commission has reaffirmed on many occasions in various orders issued in Cause No. 40785 that it has jurisdiction over matters pertinent to universal service reform, as well as over the parties that have participated in this proceeding. The Commission acknowledged such previous determinations in its initial order commencing the investigation in this Cause. *See*, Order, Cause No. 42144 (*Ind. Util. Reg. Comm’n*, December 27, 2001) at page 1.

The Presiding Officers note that while the Commission has yet to decide a single issue in this matter through the issuance of a final order, and will not make any final determinations in this Cause until it has conducted an Evidentiary Hearing, the Presiding Officers hereby reject the position set forth by the Wireless Carriers that the Commission *must* undertake a rulemaking under IC § 4-22-2.³ In support of their conclusion that the Commission must undertake rulemaking under IC § 4-22-2, the Wireless Carriers direct the Commission to the Court’s findings in *National Rural Utilities Cooperative Finance Corporation v. Public Service Commission*, 528 N.E. 2d, note 4 (Ind. App. 1988), and in *Citizens Action Coalition v. Indiana Statewide Association of Rural Electric Cooperatives* 693 N.E. 2d 1324, 1328 (Ind. App. 1998), in which the Court found action on one or more utilities, which did not include action on other similar utilities, was an adjudication, not a rulemaking.

The present case is unlike the cases cited by the Wireless Carriers. As opposed to the general authority provided to administrative agencies under IC § 4-22-2, under the Commission’s specific authority set forth in IC § 8-1-2.6 it may by order “adopt rules and policies as well permit the Commission” to ensure “the continued availability of universal telephone service” within the state of Indiana. (See, I.C. 8-1-2.6-1(5)). The exercise of this authority is, of course, subject to the Commission providing the parties with procedural due process prior to the adoption of any such rules through the development of an evidentiary record and the issuance of its order based upon that record. (“The Commission shall adopt the rules or enter an order only if it finds, *after notice and hearing*,. . . .”) IC § 8-1-2.6-3; (emphasis added). This matter has been appropriately noticed, and an Evidentiary Hearing has been scheduled. Thus, this proceeding comports

³ The Presiding Officers would like to reiterate that the purpose of this investigation is to allow the Commission to examine the full breadth of issues identified and addressed by the parties to this Cause. The Commission recognizes that, based on the evidence to be presented in this Cause, it may not be able to reach a final determination regarding the merits of a state Universal Service Fund; or determine the appropriate structure and mechanics of a state Universal Service Fund. However, several other state commissions have investigated the issues and feasibility surrounding a state Universal Service Fund, and properly concluded that it was within their purview to do so. Accordingly, while the Presiding Officers hereby reject the legal analyses and conclusions presented by the Wireless Carriers regarding the Commission’s specific legal authority to undertake this investigation, the Commission will fully consider all relevant issues presented by the parties prior to making any final determinations in this Cause.

with the requirements contained in IC § 8-1-2.6-3, and the Presiding Officers hereby find that, contrary to the argument presented by the Wireless Carriers, the Commission is not limited in its adoption of rules with respect to the enactment of a SUSF by any requirement to adhere to the rulemaking procedures set forth in IC § 4-22-2.

The Presiding Officers also reject the Wireless Carriers contention that the Commission is preempted by the Federal law generally from regulating the rates and charges of CMRS providers, and may do so only pursuant to petition granted by the FCC. 47 U.S.C. §332(c)(3).

As pointed out by the CCRTC, 47 U.S.C. 254(f), is the underlying authority for Indiana (or any other state) to establish its own state universal service fund. It states:

- (f) **STATE AUTHORITY.** – A State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

47 U.S.C. 254(f).

In accordance with 47 U.S.C. 332(c)(3)(A), states do have authority to assess fees from wireless carriers for a state universal service fund.

- (A) **STATE PREEMPTION.** – Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service. **Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.** (Emphasis added).

47 U.S.C. 332(c)(3)(A)

In the matter of the *Texas Office of Public Utility Counsel, Celpage, Inc., et. al. v. FCC*, 183 F.3d 393, 426 (5th Cir. 1999), *cert. Denied* 530 U.S. 1210 (U.S. 2000), the Court analyzed the relevant provisions of the Telecommunications Act of 1996 ("TA-96") and concluded that universal service contributions support the expansion of and increased access to the public institutional telecommunications network, and that each paging carrier directly benefits from a larger network. The Court stated:

Paging carriers are uniquely dependent on a widespread telecommunications network for the maintenance and expansion of their business.

Celpage, at 428.

The Court in *Celpage* also analyzed the states' ability to assess universal service fees from CMRS providers. The Court stated:

Celpage and the CMRS Providers raise a weak challenge to state contribution requirements, contending that CMRS providers are "jurisdictionally interstate" and therefore exempt from state assessments. We agree with the FCC that the plain language of §254(f) simply requires that "every telecommunications carrier that provides intrastate telecommunications services" contribute to state mechanisms. As the agency found, a significant portion of the CMRS providers' services arise from providing *intrastate* telecommunications services. (Footnote omitted).

Celpage, at 433

Based on the foregoing analysis the Presiding Officers hereby find that this matter is properly before the Commission and that the Wireless Carriers Motion to Dismiss should be denied.⁴

B. Findings on Motion to Bifurcate. In their Motion to Bifurcate, the Wireless Carriers urge the Commission to separate the SUSF issues into an initial *policy phase*, to determine if an SUSF is necessary; and, if the Commission determines that an SUSF is necessary, it should then undertake a subsequent *implementation phase*. The Wireless Carriers also indicate that the Commission should separate SUSF issues from non-SUSF issues, and include with the non-SUSF issues the implementation of an

⁴ While the Wireless Carriers Motion to Dismiss also included a Request for Stay, the Presiding Officers note that the Commission has not issued a final order in any phase of this proceeding, and that none of the parties will suffer irreparable harm merely by participating in this Cause. The Wireless Carriers' Motion to Stay appears to focus primarily on issues of judicial economy, which will be addressed by the Presiding Officers as part of our analysis of the issues presented in the Wireless Carriers' Motion to Bifurcate. To the extent that the Motion to Stay could be considered as a stand-alone issue it is hereby denied by the Presiding Officers as no findings regarding the creation or funding of a SUSF have been made by the Commission.

alternate revenue recovery method related to the access rate reductions set forth in Phase I of this proceeding.

The Commission's Interim Order of May 29, 2002, sets forth the process for resolving the remaining issues in Phase II, including whether or not a SUSF should be established as part of Phase II of this proceeding. That process contemplates the use of technical workshops to permit the parties to discuss and narrow the issues. It also provided for the filing of a final report with the Commission by an executive committee comprised of key representatives to this proceeding. The final report was intended to apprise the Commission as to issues upon which a consensus has been reached for settlement purposes as well as a delineation of issues that have not been resolved as a result of the workshops. Upon the completion of the Evidentiary Hearing scheduled in this Cause, it is anticipated that the Commission will issue its order as a result of the conclusion of Phase II of this proceeding that addresses all pertinent issues, including, but not limited to, matters relating to the establishment of a SUSF.

170 IAC 1.1.1-15, which address the conduct and purpose of Preliminary Hearings, vests the Commission with the discretion, in order to make the most effective use of hearing time in formal proceedings and to otherwise expedite the orderly conduct and disposition of those proceedings, to require preliminary hearings among parties to the proceedings prior to the commencement of evidentiary hearings on the merits. In accordance with 170 IAC 1.1.1-15, the Presiding Officer may, among other things, participate in the discussions; arrange for recording stipulations or agreements made at a preliminary hearing; fix the date or dates for evidentiary or other hearings on the merits that may be required to dispose of the proceeding; otherwise assist the parties to reach agreement that will expedite the proceeding and serve the public interest.

At the opening of the record in this Cause relating to the technical workshop conducted on July 24, 2002, the Presiding Law Judge made clear that the Commission wanted to know what the participating parties can or cannot agree upon as a result of their informal discussions in the technical workshops. The Presiding Officers recognize that the issues in this Cause consist of "policy" as well as "implementation" issues regarding the establishment of a SUSF. The Presiding Officers have endorsed the approach utilized in this type of regulatory process inasmuch as it maximizes the parties' ability to participate in this phase of the investigation in order to freely make their views known on each of the issues. At the same time, it affords each party the maximum flexibility to present their respective positions through testimony before the Commission on both resolved and unresolved issues which can be thoroughly examined.

Bifurcating Phase II of this proceeding into a "policy phase" and an "implementation phase" would restrict the participating parties' flexibility in examining all the issues surrounding the creation of a SUSF. Issues relating to the need for a SUSF, implementation issues associated with it and other ancillary issues are inextricably linked together with regard to the technical workshop discussions. The Wireless Providers' Motion seeks to apportion this process in such a way that it does not foster administrative efficiency, but instead restricts the flexibility of the parties from concurrently addressing all of these interrelated issues.

In its Interim Order of May 29, 2002, which initiated Phase II of this proceeding, the Commission determined that the Presiding Officers, through the use of technical staff acting to facilitate discussion of all the issues would constitute an effective use of the Commission's resources in this Cause. While some parties may not agree with the Commission's determination, questions of judicial economy and the proper conduct of Preliminary Hearings are vested with the Commission, and we find no reason to substitute the judgment of the Wireless Carriers for the procedural determinations previously made by the Commission in this Cause. Accordingly, we find that the Wireless Carriers Motion to Bifurcate should be denied.

IT IS SO ORDERED.



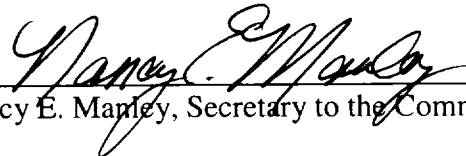
David E. Ziegner, Commissioner



Scott R. Storms, Chief Administrative Law Judge

12/02/02

Date



Nancy E. Manley, Secretary to the Commission